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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,415	04/27/2001	Gerold Tebbe	011072	1362

22876 7590 03/31/2003

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT PAPER NUMBER

1771

DATE MAILED: 03/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/844415

Applicant(s)

Tebbe

Examiner

John Guarriello

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-26 is/are pending in the application.
Of the above claim(s) 21-26 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Election/Restriction

15. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-20, drawn to textile material, classified in class 442, subclass 181.
- II. Claims 21-26, drawn to process of making, classified in class 427, subclass 285.

16. The inventions are distinct, each from the other because:

17. Inventions I and II are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process by applying the particle to the material at adhesive points.

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18. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

19. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

20. During a telephone conversation with Jody Factor on 10/4/2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-26, Group II are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

21. The disclosure is objected to because of the following informalities: pages 1-5 describe the claimed invention by referring to the claims as noted below in this paragraph, this manner of referring to the claims in this fashion

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is inappropriate and the reference to the claims in this fashion should be deleted. See page 1, lines 23-24, "according to claim 1"; page 2, lines 1-2, "according to claim 2"; page 2, lines 15-16, "according to claim 3"; page 2, lines 23-24, "according to claim 4"; page 2, lines 28-29, "according to claim 5"; page 3, lines 10-11, "according to claim 6"; page 3, lines 14-15, "according to claim 7"; page 3, lines 18-19, "according to claim 8"; page 3, lines 21-22, "according to claim 9"; page 3, lines 27-28, "according to claims 10 to 13"; page 3, lines 31-32, "claims 14 and 15"; page 3, lines 35-36, "according to claim 16"; page 4, lines 5 and 6, "according to claim 17"; page 4, lines 10-11, "describes in claim 18"; page 4, line 16, "claim 19 indicates"; page 4, lines 19-20, "according to claim 20"; page 4, lines 26-27, "according to claim 21"; page 4, lines 30-33, "according to claim 22"; page 4, lines 34-36, "according to claim 23"; page 5, lines 5-7, "according to claim 24"; page 5, lines 11-14, "according to claim 25". The limitations as described in the claims should be incorporated in the specification. The specification should not refer to the claims as the description of the invention as presently written.

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Appropriate correction is required.

22. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.

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- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

23.

Content of Specification

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- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification. It should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development:
See MPEP § 310.
- (d) Reference to a "Microfiche Appendix": See 37CFR 1.96(c) and MPEP § 608.05, if the application was filed before March 1, 2001. The total number of microfiche and the total number of frames should be

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specified. Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc and an incorporation by reference of the material on the compact disc.

(e) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

(1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

(2) Description of the Related Art: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which

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are solved by the applicant's invention. This item may also be titled "Background Art."

- (f) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

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- (g) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (h) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the

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field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (i) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet (37 CFR 1.52(b)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (j) Abstract of the Disclosure: A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims.
- (k) Drawings: See 37 CFR 1.81, 1.83-1.85, and MPEP § 608.02.

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(1) Sequence Listing, if on paper: See 37 CFR 1.821-1.825.

24. Claims 1-20 are objected to because of the following informalities: It is the Examiner's position that the term "characterised" is being interpreted as open language, as comprising. Appropriate correction is required.

Claim Rejections - 35 USC § 112

25. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 1, the preamble of the claim is directed to a "textile material having a base structure", it is the Examiner's position that the preamble is directed to a textile material, and the claim is directed to fibers or film with particles. Furthermore, it is not clear how one can claim "textile" in the preamble and yet have an alternative limitation that excludes fabric or fibrous materials. The term "base structure" is interpreted by the Examiner to be a substrate upon which the particles are applied as in a coating. The term

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“functional layer” is interpreted by the Examiner to be as stated in the instant specification on page 2, lines 1-37.

In claim 3, line 3, “preferably” is indefinite because the scope of the claim cannot be determined. It is not clear whether the narrower expression is, in fact, a claim limitation.

In claim 6, line 3, it is not clear what the phrase “near to” encompasses, this phrase appears to be awkward English.

In claim 10, lines 3-5, it is not clear what the phrase “the wall material differs in terms of its resistance to **environmental influences**” encompasses since there are no range of values expressed for “pressure, moisture, and temperature”.

In claim 15, lines 3 and 4, it is not clear what the phrase “is in an adhesive condition” encompasses.

In claim 18, lines 3-4, it is not clear if this is a Markush group, if so , then the language can be : “selected from the group consisting of”.

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In claim 19, lines 4-5, “preferably” is indefinite because the scope of the claim cannot be determined for the same reasons given for claim 3.

26. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. The Claims appear to be written in awkward English, e.g. ,“in that amongst the particles”. It is recommended applicant carefully revise the claims to be of proper grammar and consistent with U.S Practice.

Claim Rejections - 35 USC § 102

27. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamato et al. 5,232,769.

Yamato describes a textile structure corresponding to the claimed invention of textile material which is made from fibers either natural or synthetic, (column 5, lines 54-64). Yamato describes fibers which can have microvoids or the like (which corresponds to the claimed “subregions” of claim 2), (column 5, lines 54-65). Yamato describes alternatively that the textile material of fabric can be a sheet material corresponding to a film, (column 5, lines 65-68). Yamato describes microcapsules encapsulated with a treating liquid which corresponds to the embedded active substance of the claimed invention which is applied to the textile structure corresponding to the claimed functional layer (corresponding to the claimed particles or microcapsules), (column 6, lines 20-45). Yamato describes a binder which helps the microcapsules adhere to the textile structure, (column 6, lines 43-47). Yamato describes the diameter of the particles or microcapsules to be within the range of 2-300 microns, (column 4, lines 53-64). Yamato describes

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the microcapsules can be made by known processes, (column 5, lines 13-52). Yamato describes the particles can be dissolved by solvents, (column 5, lines 42-46). It is the Examiner's position that Yamato describes the essential limitations of the claimed invention. Claims lack novelty.

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hobbs et al. 5,334,436 describes active particles adhered to flexible material, (see abstract; column 1, lines 1-5; column 2, lines 62-68).

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The

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fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.




John J. Guarriello:gj

Patent Examiner

March 14, 2003

March 21, 2003



ELIZABETH M. COLE
PRIMARY EXAMINER